

**Statement of  
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Before the House Committee on Government Reform  
Subcommittee on National Security, Emerging Threats and  
International Relations and Subcommittee on Criminal Justice, Drug  
Policy and Human Resources  
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Good morning Chairman Shays, Chairman Souder, Ranking Member Kucinich, Ranking Member Cummings and Members of the Committee. I appreciate the opportunity to be here today to discuss the FBI's role in addressing criminal threats to American citizens traveling outside U.S. territorial waters.

As you know, approximately 10 million Americans are expected to travel abroad this year on vessels that navigate international waters. As a matter of course, some of them will become victims of a crime. The FBI's ability to assist our fellow Americans who may fall victim to crime in international waters will be affected by a variety of factors, including the type of crime that was committed, where the ship was when it was committed, where the ship departed, where the ship will arrive, under which nation's laws the ship is registered, the nationality of the subject or victim, the laws of other affected countries, international law, and the United States' relationship with other affected countries.

**What Types of Threats and Crimes on the High Seas Does the FBI See?**

First, let me give you a brief summary of the various crimes on the high seas that the FBI has responded to and investigated over the last five years. From FY 2000 through June of 2005, the FBI opened 305 cases of crime on the high seas. Sexual and physical assaults on cruise ships were the leading crime reported to and investigated by

the FBI on the high seas over the last five years, at 45 percent and 22 percent respectively. Missing persons cases comprised 10 percent of cases opened, and death investigations comprised 8 percent. Recently, incidents of piracy have been increasingly common in some parts of the world, the most recent being the attack on a cruise ship containing U.S. citizens off the coast of Somalia in November 2005.

Sexual assaults are the dominant threat to women and minors on the high seas. The vast majority of these incidents occur on cruise ships. Physical assaults are the second most frequent crime, and again, the majority of these assaults take place on cruise ships. Missing persons cases are more sporadic in nature and, unfortunately, in 75 percent of these cases, a body is never found. Most deaths reported occur on commercial ships. Death investigations are less common on cruise ships and private vessels. The majority of missing persons and reported deaths are adult males.

The FBI's Field Offices in Miami, Los Angeles, Tampa, Houston, and New Orleans have the largest volume of cases, due to their large and active ports, and the number of ships that arrive in and depart from these ports.

### **What International and National Laws Pertain to Security of Americans**

#### **Onboard Ships Traveling Outside U.S. Territorial Waters?**

When a U.S. citizen commits or is the victim of a crime outside the territorial waters of the U.S., the laws of the U.S., the laws of other sovereign nations, and international law will determine our legal authority to respond to or investigate the crime. The interplay of these laws is in turn dependent on a host of other factors, including, but not limited to, the vessel's points of departure and embarkation, the vessel's location at the time of the offense, the vessel's current location, the nationality of the perpetrator and

victim, and the vessel's ownership and registry. More importantly, because these offenses occur in international waters and involve the citizens or interests of other countries, the exercise of the United States' special maritime and territorial jurisdiction will encroach, to some degree, upon the interests and sovereignty of another nation. Therefore, our diplomatic relations with other involved countries, the existence and applicability of any treaties with these countries, and the extent to which we are ultimately dependent upon another country's mutual cooperation and assistance, will often determine the actual extent of U.S. authority to investigate and prosecute U.S. extraterritorial offenses against U.S. citizens.

*(Please see Attachment A for an explanation of five common circumstances in which the FBI's investigates Crime on the High Seas.)*

The principal law under which the U.S. exercises its Special Maritime and Territorial Jurisdiction (SMTJ) is set forth in Section 7 of Title 18 of the U.S. Code.

Under this statute, the U.S. has jurisdiction over crimes committed on a ship if:

- (1) The ship, regardless of flag, is a U.S.-owned vessel, either whole or in part, regardless of the nationality of the victim or the perpetrator;
- (2) The crime occurs in the U.S. territorial sea (within twelve miles of the coast), regardless of the nationality of the vessel, the victim or the perpetrator; or
- (3) The victim or perpetrator is a U.S. national on any vessel that departed from or will arrive in a U.S. port.

In addition to extending the ability of the U.S. to enforce federal laws in international waters, the SMTJ also federalizes certain common law and state law criminal offenses on the high seas, which are committed beyond the jurisdiction of any

state. Under the United States' SMTJ, FBI agents may make arrests for "any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony."

Under *international* law, there are five generally recognized principals upon which a country can permissibly assert extraterritorial jurisdiction:

- 1) *the objective territorial principle* — where the offense occurs in one country but has effects on another (for example, killing someone by shooting across an international border);
- 2) *the nationality principle* — where the offender is a citizen of the prosecuting state;
- 3) *the protective principle* — where the offense threatens the vital interests of the prosecuting state (for example, acts of terror);
- 4) *the passive personality principle* — where the victim is a citizen of the prosecuting state; and
- 5) *the universality principle* — where the offense is universally condemned by the international community, sometimes in a multinational convention or treaty to which the United States is a signatory (piracy would be one such example).

**What is The Decision Making Process and What Procedures Does the FBI Follow  
After Notification That a Crime Has Been Committed Against an American  
Onboard a Ship Outside U.S. Territorial Waters?**

The most important point to emphasize in these matters is that in *all* cases of suspected criminal activity or terrorism, the FBI should be contacted by the ship's personnel or passengers, regardless of potential jurisdiction issues. If a crime is committed against an American onboard a ship outside U.S. territorial waters, the vessel's company and U.S. victims and witnesses should contact the closest FBI office if it will be docking at a U.S. port, or the closest U.S. Embassy, if it will be docking in a foreign port. If it will be docking in a foreign port, the U.S. Embassy will then contact the FBI Legal Attache covering that territory. The FBI now has approximately 59 Legal Attache Offices around the globe. These offices have developed close working relationships with our international law enforcement partners, to assist in these investigations, and the number of these Legal Attache Offices will continue to grow in the coming years.

We work closely with other countries on international task forces, investigating everything from organized crime to child exploitation to gang activity. Because we have excellent working relationships with our foreign counterparts, as well as a physical presence in other countries, we are able to respond quickly to crimes on the high seas. For example, if a crime occurs in waters near Spain, the FBI's Legat in Madrid would work with Spanish law enforcement to initiate an effective response, overcome any obstacles that arise, and conduct any necessary investigation.

As in any other matter, the FBI will first determine if we have jurisdiction to investigate the matter, and if so, what assistance we will require from other U.S. or foreign law enforcement authorities. If the vessel has docked or will be docking in a U.S. port, FBI Agents will be able to conduct the investigation in much the same manner as in any other investigation. If the vessel has docked or will be docking in a foreign port, the

FBI Legal Attache Office will work with and assist foreign authorities to the greatest extent possible to protect U.S. citizens and interests. They will not, however, be able to conduct an investigation as if they were on U.S. soil. And, in many cases, they will have to depend on the cooperation of foreign authorities, who will actually conduct the investigation. However, other countries may allow us to take a more active role in the actual investigation. In general, most countries are cooperative and work with us to develop evidence, to provide that evidence to us, and to assist our efforts to prosecute appropriate cases in U.S. courts.

As in any other investigation, the FBI will attempt to conduct, or to have conducted, any necessary investigation and the preservation of any potential evidence, as soon as is practically possible or reasonable. The FBI will attempt to board vessels prior to their docking or immediately upon their arrival in port, to begin an investigation, if that is reasonable and practical. Then as in any other investigation, the FBI will directly, or indirectly in cooperation with its foreign counterparts, conduct all interviews, collect all evidence, and work with the appropriate U.S. Attorney's Office and the Department of Justice's Office of International Affairs, to complete the investigation, and where appropriate indict and prosecute the case in a U.S. court.

If the crime occurs within the reach of the United States Coast Guard and within the maritime or SMTJ of the FBI, we work together to address any criminal threat. Under an existing Memorandum of Understanding and longstanding practice, the U.S. Coast Guard and the FBI work closely together to coordinate our respective roles and responsibilities in enforcing our nation's maritime jurisdiction and SMTJ. The key to this

successful relationship has been, and continues to be, effective communication, intelligence sharing, coordination and cooperation.

**What is the Decision Making Process and What Procedures Does the FBI Follow After Notification that a Ship With Americans is Attacked By Terrorists or Pirates?**

Another threat that has received substantial media coverage lately is piracy. Upon being notified of such a case, the FBI will communicate with the vessel to collect the facts and circumstances concerning the incident. The initial investigation will focus on how and where the incident occurred, and whether the United States has jurisdiction. If the United States does *not* have jurisdiction, the FBI will contact the governing authority that *does* have jurisdiction and work with them to formulate an appropriate response. After addressing any immediate concerns over the preservation of life and the preservation of the crime scene, the FBI will initiate an investigation as it would in any other crime on the high seas, as previously described.

In the event a vessel was seized or individuals onboard were held against their will, a joint investigation and response would be coordinated with the Departments of State, Homeland Security, and Defense.

If the attack was determined to be an act of terrorism, the FBI has clear extraterritorial jurisdiction to investigate any act of terrorism against U.S. citizens and interests anywhere it occurs in the world.

**What Are the FBI's Roles and Responsibilities Under the Newly Released National Strategy For Maritime Security?**

Next, I'd like to give you an overview of the FBI's role and responsibilities under the National Strategy for Maritime Security (NSMS). As you know, the NSMS established strategic objectives and actions to better protect U.S. interests in the maritime domain. In support of the NSMS, eight national implementation plans have been approved.

One of these eight supporting plans is the Maritime Operational Threat Response (MOTR) Plan, which clearly establishes the roles and responsibilities of the various government agencies that may be involved in responding to threats. The MOTR Plan also provides a framework for agencies to communicate with each other and coordinate their response to a maritime threat or incident.

Under the MOTR Plan, the FBI, through the Department of Justice, has three main roles. The FBI is the lead agency for criminal investigations for all statutes within its jurisdiction arising from threats in the maritime domain, and for all prosecutions arising from threats or acts in the maritime domain.

The FBI is also the lead agency for the investigation of terrorist acts or terrorist threats by individuals or groups inside the United States or directed at United States citizens or institutions abroad, where such acts are within the federal criminal jurisdiction of the United States. Accordingly, the FBI is responsible for coordinating the activities of other members of the law enforcement community to detect, prevent, and disrupt terrorist attacks.

In addition, the FBI is the lead MOTR agency for intelligence collection in the United States. The FBI is responsible for coordinating with the Department of Homeland Security, the Department of Defense, and the Department of State to integrate all U.S.



Government maritime security programs and initiatives into a comprehensive, cohesive national security effort. As with all FBI efforts, this includes full coordination and cooperation with state and local officials, the private sector, and our foreign counterparts.

Chairman Shays and Members of the Committee, thank you again for the opportunity to testify today. The FBI is committed to working with our partners at every level to investigate and prosecute crimes on the high seas. We will do everything in our power to uphold our mission of protecting our fellow citizens from crime and terrorism.

I would now be happy to answer any questions you may have.

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## Attachment A

Country of Ship's Registry	Location of Offense	Relevant U.S. Statute	Who has jurisdiction?
United States[1]	U.S. territorial waters[2] or high seas	18 U.S.C. § 7(1)	U.S.
United States	Territorial waters of foreign nation	18 U.S.C. § 7(1)	U.S. concurrent w/ host nation
Foreign Nation	U.S. territorial waters	18 U.S.C. § 7(1)	U.S. (subject to international law and applicable treaties)
Foreign Nation	High seas	18 U.S.C. § 7(7)[3]	U.S. (subject to international law) if offense is committed by or against U.S. nationals.[4]
Foreign Nation	High seas, territorial waters of a foreign nation	18 U.S.C. § 7(8)[5]	U.S., if ship is departing from or arriving in the U.S. and offense is committed by or against U.S. nationals (subject to international law and applicable treaties).

[1] 18 U.S.C. § 9 defines “Vessel of the United States” as “a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under laws of the United States, or of any State, Territory, District, or possession thereof.”

[2] The United States has extended the territorial sea to 12 nautical miles for the application of many U.S. laws. *See Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 441 n. 8 (1989).

[3] 18 U.S.C. § 7(7) confers U.S. jurisdiction “any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.”

[4] Extent of U.S. jurisdiction would largely depend on the parameters of any treaty between the U.S. and the nation of registry. Absent a treaty, the U.S. could exercise jurisdiction.

[5] Courts have interpreted § 7(8) to require some kind of a nexus between the foreign vessel and the United States. In *U.S. v. Roberts*, 1 F.Supp.2d 601 (E.D. La. 1998), the court found jurisdiction under 18 U.S.C. § 7(8) in a case involving a national of St. Vincent & the Grenadines who allegedly sexually assaulted an American minor on a Liberian cruise ship (Carnival) on the high seas approximately 63 miles off the coast of Mexico.

Note: The discussion contained herein does not necessarily reflect legal principles that apply to asserting U.S. jurisdiction for violations of U.S. law beyond title 18